

If delivery charges are included in the selling price of the tangible personal property sold, the delivery expenses are not deductible from gross receipts for Retailers' Occupation Tax liability purposes. See 86 Ill. Adm. Code 130.415(c). (This is a GIL.)

May 4, 2005

Dear Xxxxx:

This letter is in response to your letter dated June 21, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing this letter hoping to clarify an issue regarding sales tax.

ABC is a distributor of commercial laundry and dry cleaning equipment. Our suppliers are located in many states including Illinois. At times a sale is made where ABC has our supplier drop ship items directly to our customer. ABC separately states on invoices to customers freight charges for items sold that are drop shipped from our supplier to the customer.

Two years ago the Illinois Department of Revenue conducted a sales tax audit of our company. At the conclusion of this audit the auditor informed us that we were in error on basically one matter. We needed to be charging sales tax on separately stated freight for drop shipments that are shipped from an out of state supplier to our customer in Illinois. We were required to pay sales tax on the freight for out of state drop shipments from our suppliers to our Illinois customers for the period in which she audited. She based her decision on Regulation 130.415 Section E.

Since that time our invoices have reflected sales tax on separately stated freight to our Illinois customers who receive drop shipments from our out of state suppliers. We have not encountered a problem until recently. One of our customers realized the sales tax exceeded the amount that should be charged for the item ordered. We explained there

was additional tax because of the freight and sent him a copy of the regulation. He in turn contacted INDIVIDUAL from your office and she told him that he did not need to pay sales tax quoting from 130.415 Section D. This prompted me to contact INDIVIDUAL and I was not able to get an exact answer from her. I have attached the correspondence I have had with her.

I then spoke with INDIVIDUAL2 at your office who said this is a very gray area. She also said she believes we fall under Section D and that ABC would not be required to charge sales tax on separately stated freight charges on drop shipments from our out of state suppliers to our customers but suggested I contact the legal department for clarification. We are therefore requesting clarification as to whether or not sales tax should be charged on separately stated freight charges for drop shipments from out of state suppliers to our customers in Illinois.

At the time of our audit, ABC, our accountant and tax attorney all believed that our company falls under Section D and that we would not need to charge sales tax on separately stated freight charges from our out of state suppliers to our customers but the auditor was definite on her decision, so we in turn complied.

If you believe our company falls under Section D and we do not have to charge sales tax on separately stated freight charges for drop shipments from our out of state suppliers to our customers in Illinois, one question remains. Is it necessary to have a separate invoice for the separately stated freight or can we continue to keep the separately stated freight charges on the same invoice included with the other items sold?

I would greatly appreciate your clarifying this situation and notify ABC whether or not to charge sales tax on the item described above. Thank you

## **DEPARTMENT'S RESPONSE:**

Please be advised that your correspondence of May 28, 2004, states an assertion in error. Please note, there is no difference in the determination of tax liability for items shipped from a home office located in Illinois to a customer located in Illinois, versus items dropped shipped from an out-of-State supplier to your Illinois customers. The tax liability does not depend on whether the items are shipped from within or outside of Illinois. The test is whether the freight charges are agreed to separately from the selling price.

The Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act may be found at 86 Ill. Adm. Code 130.415. As you can see from the regulation, transportation and delivery charges, also designated as shipping and handling charges, are not taxable if it can be shown that the charges are agreed to separately from the selling price of the tangible personal property sold and the charges are actually reflective of the costs of shipping. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

You have provided no information confirming that the shipping charges were agreed to separately. In light of the information contained in your letter, we must defer to the determination of the auditor, who is in the best position to make a determination on this matter. You may wish to contact the audit department to review your billing procedures for future transactions.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

EEB:msk